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Chapter 20.49 – Wireless Telecommunications Facilities

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20.49.010 – Purpose

- A. The purpose of this Chapter is to provide for the installation, modification, operation and maintenance of wireless telecommunication facilities ("Telecom Facilities") on public and private property consistent with State and federal law while ensuring public safety, ~~reducing~~ minimizing the visual effects of Telecom Facilities on public streetscapes, protecting public views, and otherwise avoiding and mitigating the visual impacts of Telecom Facilities on the community.
- B. Telecom Facilities shall utilize the least obtrusive available technology in order to reduce or minimize the number of Telecom Facilities in the City and ~~thereby reduce~~ minimize their visual impact on the community.
- C. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting ~~telecom~~ telecommunication services. This Chapter shall be applied to providers, operators, and maintainers of ~~wireless~~ telecommunication services regardless of whether authorized or subject to ~~by~~ State or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent ~~telecom~~ telecommunication services.

20.49.020 – Effect of Chapter

- A. Regulatory Scope. These regulations are applicable to all Telecom Facilities ~~providing as~~ defined herein and that provide wireless voice and/or data transmission such as, but not limited to, cell phone, internet, and radio relay stations.

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B. Permit and/or Agreement Required. ~~Prior to construction~~Unless the provisions of this Chapter provide otherwise, prior to installation or modification of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC) in accordance with Section 20.49.060 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust Property, shall enter into an agreement prepared and executed by the City Manager or ~~it~~his or her designee prior to ~~construction~~installation of the Facility, consistent with Section 20.49.080 (Agreement for Use of City-owned or City-held Trust Property).

C. Exempt Facilities. The following types of Telecom facilities are exempt from the provisions of this Chapter:

1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
4. Facilities exempt from some or all of the provisions of this Chapter by operation of State or federal law to the extent so determined by the City.
5. Systems installed or operated at the direction of the City or its contractor.
6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications or data transmission services to building occupants.

D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by any local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

- E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:
1. All applicable City design guidelines and standards.
 2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.
- F. Legal Nonconforming Facility. Any Telecom Facility that was lawfully constructed, erected, or approved prior to *[INSERT EFFECTIVE DATE OF THIS CHAPTER]*, that is operating in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be ~~accepted and allowed as~~ deemed a legal nonconforming Facility. Legal nonconforming Facilities shall comply at all times with the laws, ordinances, regulations, and any conditions of approval in effect at the time the Facility was approved, and any applicable provisions of the Municipal Code or federal and State laws as they may be amended or enacted, in the future.

20.49.030 – Definitions

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For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.
- B. Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support structure, all of which elements are deemed to be part of the Antenna.
- C. Base Station. Base Station means the electronic equipment and appurtenant Support Equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. A Base Station does not include the Antennas, Antenna support structure, or any portion of Distributed Antenna System (DAS).
- D. City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but not limited to City Hall, Police and Fire facilities, recreational facilities, parks, beaches, libraries, monuments, signs, streetlights and traffic control standards.
- E. Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

- L. Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City. The definition of Operator or Telecom Operator does not include a property owner(s) ~~who~~that leases property to an Operator for a Telecom Facility.
- M. Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any public street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots. The PROW does not include private streets.
- N. Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view such as in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average reasonable observer do not qualify within this definition. For example, an artificial tree ~~is~~may not not be considered to be a Stealth Facility.
- O. Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.
- P. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.
- Q. Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.
- R. Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.
- S. Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A

greatest extent Feasible, Facilities shall be designed to minimize the visual impact of the Facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.
5. Collocation. In evaluating whether the Collocation of a Telecom Facility is Feasible, the criteria listed in 1-4 above shall be used to evaluate the visual effect of the combined number of Facilities at the proposed location.

from a new Telecom Facility
B. Public View Protection. All new or modified Telecom Facilities, ~~including those facilities considered through an whether approved by~~ administrative ~~processor discretionary review~~, shall comply with Section 20.30.100 (Public View Protection). Additionally, potential impacts to public views that are not identified by the City's General Plan Policy NR 20.3 (Public Views) policies shall ~~be considered and evaluated consistent with Section 20.30.100.~~

first be evaluated to determine if inclusion in list of identified public views would be appropriate.
C. Height.

1. The Planning Commission or City Council may approve or conditionally approve a CUP for a Telecom Facility that exceeds the maximum height limit for the zoning district in which the Facility is located provided it does not exceed the maximum height limit by 15 feet only after making all of the required findings in Section 20.49.060(HH) (Permit Review Procedures).
2. All Telecom Facilities shall comply with height restrictions or conditions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan for John Wayne Airport and Airport Land Use

F. Screening Standards. For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that must be considered for all Facility installations:

1. ~~For~~ Class 1 (Stealth/Screened) Installations:

- a. All Telecom Facility components, including all Antennas, Antenna panels, cables, wires, conduit, mounting brackets, and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind screening elements and not on the exterior face of the building or structure.
- b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
- c. When a Telecom Facility is proposed within an existing or new architectural feature such as a steeple, religious symbol, tower, cupola, clock tower, sign tower, etc., the Facility shall ~~blend~~ ^{be} architecturally compatible with the existing structure or building.

2. ~~For~~ Class 2 (Visible) Installations:

- a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. No cables, wires, conduit, mounting brackets or any other associated support equipment shall be visible.
- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing utility structures, streetlights, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles, or Utility Poles shall be screened by means of canisters, radomes, shrouds

other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole.

- b. New or replacement vertical structures may be allowed ~~where~~when authorized by the Municipal Code and approved by the Public Works Department. Replacement poles or streetlights shall be consistent with the size, shape, style, and design of the existing pole, including any attached light arms. New poles or streetlights may be installed provided they match existing or planned poles within the area.
- c. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the pole.

4. ~~For~~ Class 4 (Freestanding Structure) Installations:

- a. The installation of new Lattice Towers or Monopoles with visible antennas or Antenna Arrays is strongly discouraged- due to the visual effects of such facilities. Preferred Monopole designs include fully screened Antennas without visible brackets, cables, or conduit. Additionally, any Lattice Tower or Monopole should be sited in the least obtrusive location as possible. *practicable*
- b. The construction of new freestanding structures such as signs, monoliths, pyramids, light houses, or other similar vertical structures shall be designed and sited to appropriately complement a site and screen all elements of the Telecom Facility.
- c. The installation of artificial rocks shall match in scale and color other with rock outcroppings in the general vicinity of the proposed site. An artificial rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- d. The installation of artificial trees or shrubbery is strongly discouraged- if they are obviously not natural to the average reasonable observer. When an artificial tree or shrubbery is proposed, it shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. All Antennas and Antenna supports shall be contained within the canopy of the tree design or other vegetation comparable to that being replicated by the proposed screening elements. Finally, the addition of new comparable living vegetation may be necessary to enhance the artificial tree or shrubbery screening elements.
- e. Flagpoles shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole.

H. Required Findings for Telecom Facilities. The following findings shall apply to all Facilities requiring discretionary review:

1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following findings:
 - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
 - b. The proposed Telecom Facility complies with height, location and design standards, as provided for in this Chapter.
 - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot Feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
 - d. An alternative plan that would result in a higher ~~priority~~preference Facility Class category for the proposed Facility is not available or reasonably Feasible and desirable under the circumstances.
2. Findings to Increase Height. The Planning Commission may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the maximum height limit for the zoning district in which the Facility is located up to a maximum of 15 feet only after making each of the following findings in addition to the ~~required~~General findings ~~above, as well set forth in 20.49.080 (H) (1) and~~ the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):
 - a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
 - b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.070 – Permit Implementation, Time Limits, Extensions, and Appeals

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

Any permit issued will be conditioned upon, and may be revoked, and the Telecom Facility shall ~~be required to be removed~~ ^{be} ~~or~~ and restored to its pre-modification condition if any material statement made with respect to the Facility application is false or the modifications as actually made would have required a discretionary review had the plan for the Facility accurately depicted the modifications.

20.49.100 – Operational and Radio Frequency Compliance and Emissions Report

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require use of the Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report.

20.49.110 – Right to Review, Revoke or Modify a Permit

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.120 – Removal of Telecom Facilities

- A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by